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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/735,919	04/09/2001	Marc Herrmann	T3264-906756	5817

181 7590 06/17/2005

MILES & STOCKBRIDGE PC  
1751 PINNACLE DRIVE  
SUITE 500  
MCLEAN, VA 22102-3833

EXAMINER
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PHAN, TAM T

ART UNIT	PAPER NUMBER
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2144

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/735,919

Applicant(s)

HERRMANN ET AL.

Examiner

Tam (Jenny) Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-22 and 24-35 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 15-22 and 24-35 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 08 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Amendment received on 03/23/2005 has been entered. Claims 1-14 and 23 are cancelled. Claims 15-16, 22, and 26-27 are currently amended.
2. Claims 15-35 are presented for examination.

### *Priority*

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
4. The effective filing date for the subject matter defined in the pending claims which has support in parent FR 99 15892 in this application is 12/16/1999. Any new subject matter defined in the claims not previously disclosed in parent FR 99 15892, is entitled to the effective filing date of 12/14/2000.

### *Claim Rejections - 35 USC § 101*

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 26-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
7. Claims 26-35 are rejected under 35 U.S.C. 101 because a device that consists solely of the manipulation of an abstract idea is not concrete or tangible. See *In re Warmerdam*, 33 F.3d 1354, 1360, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994). See also *Schrader*, 22 F.3d at 295, 30 USPQ2d at 1459. There are no teachings in the presently amended claims and current specification of record that disclosed the claimed device to be associated with tangible embodiments or physical computer components. Claims

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26-35 are directed toward "software per se" that is not tangibly embodied on physical computer components and therefore these claims are rendered non-statutory.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 15-22 and 24-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jung et al. (U.S. Patent Number 6,308,208), hereinafter referred to as Jung, in view of Turek et al. (U.S. Patent Number 6,460,070), hereinafter referred to as Turek.

10. Regarding claim 15, Turek disclosed a method for deploying a distributed monitoring of a computer system comprising a plurality of resources to be monitored forming at least one monitored domain (Abstract, Figures 1), the method comprising: determining a plurality of indicators to be deployed, the plurality of indicators characterizing the status or the operation of one or more resources of the computer system [cell attributes] (Figure 5 sign 64, column 2 lines 6-8, lines 31-41, column 7 lines 10-19) specifying the domain or domains of the computer system in which each indicator should be deployed (Figures 4-5, column 1 lines 55-60, column 2 lines 49-58, column 6 lines 1-7, lines 8-21); deploying a configuration agent for each of the resources to be monitored (column 5 lines 57-61); for each of the resourced to be

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monitored, deploying an indicator agent to evaluate each of the plurality of indicators (column 5 lines 57-61, column 6 lines 1-7); and deploying the plurality of indicators

11. Jung taught the invention substantially as claimed. However, Jung did not expressly teach a method having steps of creating a configuration agent for each of the resources to be monitored and for each of the resourced to be monitored, creating an indicator agent to evaluate each of the plurality of indicators.

12. Jung suggested exploration of art and/or provided a reason to modify the method with additional features such as the runtime agent creation feature (column 2 lines 49-58, column 3 lines 7-15, column 6 lines 8-21).

13. Turek disclosed a method having steps of creating a configuration agent for each of the resources to be monitored and for each of the resourced to be monitored, creating an indicator agent to evaluate each of the plurality of indicators (Abstract, Figures 4-6, column 2 lines 30-46, column 5 lines 43-51, column 6 lines 27-37, column 7 lines 49-63).

14. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Jung with the teachings of Turek to include the runtime agent creation feature in order to provide better flexibility since in large network, distributed computer networks, network problems are complicated and difficult to diagnose (Turek, column1 lines 48-50) and using an object-oriented approach to create the agents at runtime, the system management framework facilitates execution of system management tasks required to manage the resources in the managed regions (Jung, column 4 lines 27-38).

15. Regarding claim 16, Turek disclosed a deployment method wherein each indicator agent is an indicator deployment agent, created by the respective configuration agent, the method further comprising determining by said indicator deployment agent, for the indicator with which said deployment agent is associated, various combinations of the values of the variables for which the indicator is calculated (Abstract, column 2 lines 16-21, lines 47-58, column 7 lines 2-14, 34-48).

16. Regarding claim 17, Jung and Turek combined disclose a deployment method further comprising, analyzing a formula defining the indicator, generating by an indicator compiler two object classes ["I\_Deployer" and "I\_Indicator"], after analyzing the formula defining the indicator, said two object classes corresponding to the indicator deployment agents that deploy the instances of the class ["I\_Indicator"] and to the indicator agents that evaluate the indicator (Jung, Figure 5, column 2 lines 31-41, column 7 lines 10-19; Turek, column 2 lines 47-53, column 6 lines 27-37, lines 49-59, column 7 lines 34-48).

17. Regarding claim 18, Turek disclosed a deployment method further comprising: executing by the indicator deployment agent a process for resolving the names of objects referenced in a formula of the indicator and creating by the indicator deployment agent corresponding indicator agents by determining valid combinations of the values of the variables of said objects (column 5 lines 43-60, column 7 lines 49-63, column 8 lines 39-52).

18. Regarding claim 19, Jung and Turek combined disclose a deployment method according to claim 17, further comprising generating, for any indicator, by an indicator compiler two object classes ["I\_Deployer" and "I\_Indicator"], after analyzing the formula

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defining the indicator, said two object classes corresponding to the indicator deployment agents that deploy the instances of the class ["I\_Indicator"] and to the indicator agents that evaluate the indicator (Jung, Figure 5, column 2 lines 31-41, column 7 lines 10-19; Turek, column 2 lines 47-53, column 6 lines 27-37, lines 49-59, column 7 lines 34-48).

19. Regarding claim 20, Turek disclosed a deployment method wherein the process for resolving the name consists of applying a process for searching for all of the objects identified in the formula of the indicator, the search process consisting of verifying for a referenced object whether a constraint expressed in the values of the variables is satisfied, and if the constraint is satisfied, creating the indicator agent associated with the indicator deployment agent, using as parameters the objects corresponding to the valid combinations of the values of the variables found (column 7 lines 2-14, lines 34-48, column 8 lines 39-52, column 9 lines 5-20).

20. Regarding claim 21, Turek disclosed a deployment method wherein the process for resolving the name consists of applying a process for searching for all of the objects identified in the formula of the indicator, the search process consisting of: verifying for a referenced object whether a constraint expressed in the values of the variables is satisfied, and if the constraint is satisfied, creating the indicator agent associated with the indicator deployment agent, using as parameters the objects corresponding to the valid combinations of the values of the variables found (column 7 lines 2-14, lines 34-48, column 8 lines 39-52, column 9 lines 5-20).

21. Regarding claim 22, Turek disclosed a deployment method further comprising: deploying a specified configuration using a configuration deployment agent that creates

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and assigns each configuration agent; and managing the configuration deployment agents and the configuration agents by at least one agent machine installed in at least one resource of the monitored domain (Figures 1-2, 5, column 2 lines 30-62).

22. Regarding claim 24, Turek disclosed a deployment method further comprising managing the indicator deployment agent either by an agent machine that manages the configuration agent associated with the indicator deployment agent, or by a different agent machine (Figures 1-2, 5, column 2 lines 30-62, column 49-59, column 9 lines 51-65).

23. Regarding claim 25, Turek disclosed a deployment method further comprising managing the indicator deployment agent either by an agent machine that manages the configuration agent associated with the indicator deployment agent, or by a different agent machine (Figures 1-2, 5, column 2 lines 30-62, column 49-59, column 9 lines 51-65).

24. Regarding claims 26-35, the system corresponds to the method of claims 15-22 and 24-25 and thus these claims are rejected using the same rationale.

25. Since all the limitations of the claimed invention were disclosed by the combination of Jung and Turek, claims 15-22 and 24-35 are rejected.

### ***Response to Arguments***

26. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

27. As the rejection reads, Examiner asserts that the combination of these teachings render the claimed invention obvious.



***Conclusion***

28. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to the enclosed PTO-892 for details.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam (Jenny) Phan whose telephone number is (571) 272-3930. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

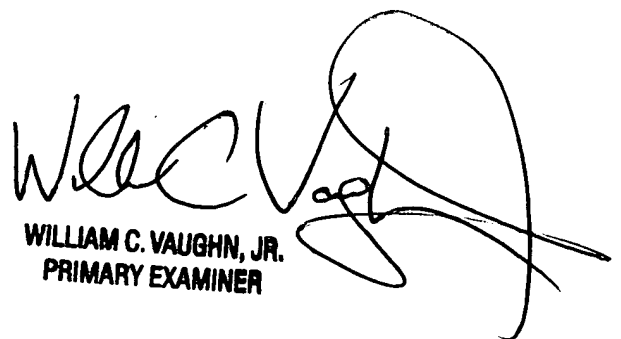
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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tp  
June 4, 2005

  
WILLIAM C. VAUGHN, JR.  
PRIMARY EXAMINER